

STATE OF MICHIGAN
COURT OF APPEALS

CAROL NAGY,

Plaintiff-Appellee,

v

WESTFIELD INSURANCE,

Defendant-Appellant,

and

ARIANE NEVE,

Defendant.

UNPUBLISHED

July 30, 2013

No. 311046

Kent Circuit Court

LC No. 12-001133-CK

Before: SAWYER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Defendant Westfield Insurance (hereinafter referred to as defendant) appeals by leave granted an order denying its motion for summary disposition based on the trial court's determination that plaintiff was entitled to underinsured motorist (UIM) coverage. We reverse.

On January 13, 2010, plaintiff was injured when a car being driven by Ariane Neve rear-ended her vehicle. Plaintiff was operating a Subaru Forester owned by her husband's business, Expressway Auto Auction, with a dealer's license plate attached. Neve's insurance policy limit was insufficient to cover plaintiff's injuries. Plaintiff had \$1,000,000 in uninsured motorists (UM) coverage, which by definition included UIM coverage, through a business automobile policy with defendant. However, defendant denied plaintiff's request for UIM benefits, maintaining that plaintiff was not operating a "covered auto" at the time of the accident.

There are three forms in the policy relevant to determining whether the Subaru had UIM Coverage: the Garage Coverage Form, the Garage Declarations and Auto Dealers Supplementary Schedule (Garage Declarations Schedule), and the Michigan Uninsured Motorists Coverage endorsement (UM Endorsement).

Section I of the Garage Coverage Form defines "covered autos" for each type of coverage offered under the policy:

Item Two of the Declarations shows the “autos” that are covered “autos” for each of your coverages. The following numerical symbols describe the “autos” that may be covered “autos.” The symbols entered next to a coverage on the Declarations designate the only “autos” that are covered “autos.”

The Garage Coverage Form refers the reader to the Garage Declarations Schedule to find the numerical symbol for each particular type of coverage, and the Garage Declarations Schedule states:

Each of these coverages will apply only to those “autos” shown as covered “autos.” “Autos” are shown as covered “autos” for a particular coverage by the entry of one or more of the symbols from the Covered Auto Section of the Garage Coverage Form next to the name of the coverage.

In the Garage Declarations Schedule, next to UM coverage is symbol 26. Symbol 26 is defined, in relevant part, on the Garage Coverage Form as:

Owned “Autos” Subject to a Compulsory Uninsured Motorists Law

Only those “autos” you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage.

Michigan does not require UM or UIM coverage. *Dawson v Farm Bureau Mut Ins Co of Mich*, 293 Mich App 563, 568; 810 NW2d 106 (2011). It is undisputed that the Subaru, which was licensed and principally garaged in Michigan, did not fall within the definition of a “symbol 26” covered auto. The parties’ interpretations differ when the UM Endorsement is considered.

The UM Endorsement provides, in part:

For a covered “auto” licensed or principally garaged in, or “garage operations” conducted in, Michigan, this endorsement modifies insurance provided under the following: . . .

GARAGE COVERAGE FORM . . .

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

* * *

Who Is An Insured:

* * *

Anyone “occupying” a covered “auto” or a temporary substitute for a covered “auto.”

We review de novo a trial court's decision regarding a motion for summary disposition. *Rednour v Hastings Mut Ins Co*, 468 Mich 241, 243; 661 NW2d 562 (2003). At issue is the interpretation of an insurance contract, which is a question of law that this Court also reviews de novo. *Id.*

“[I]n reviewing an insurance policy dispute we must look to the language of the insurance policy and interpret the terms therein in accordance with Michigan’s well-established principles of contract construction.” *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

First, an insurance contract must be enforced in accordance with its terms. A court must not hold an insurance company liable for a risk that it did not assume. Second, a court should not create ambiguity in an insurance policy where the terms of the contract are clear and precise. Thus, the terms of a contract must be enforced as written where there is no ambiguity. [*Id.* at 354 (citations omitted).]

“While we construe the contract in favor of the insured if an ambiguity is found, this does not mean that the plain meaning of a word or phrase should be perverted, or that a word or phrase, the meaning of which is specific and well-recognized, should be given some alien construction merely for the purpose of benefitting an insured.” *Id.* (citation omitted). “[I]f a contract, even an inartfully worded or clumsily arranged contract, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear.” *Dancey v Travelers Property Cas Co*, 288 Mich App 1, 8; 792 NW2d 372 (2010) (internal citation and quotation marks omitted).

This Court has considered a similar policy that defined a covered auto by way of a symbol in the Declarations and then had a UM endorsement. In *Dancey*, *id.* at 4, 9, UM coverage was limited in the Declarations to “symbol 2” autos, which were defined in the coverage form as “owned ‘autos.’” The UM Endorsement, for purposes of that case, provided coverage for anyone occupying a “covered ‘auto.’” *Id.* This Court noted that to be covered, a car had to fall within the parameters of symbol 2. *Id.*

In addition, the Ohio Court of Appeals has reached the very result urged by Westfield. *Dorsey v Federal Ins Co*, 154 Ohio App 3d 568, 575-576; 798 NE2d 47 (2003). The policy in *Dorsey* had an Ohio UM/UIM¹ Endorsement, but the declarations page limited UIM coverage to “symbol 6” autos, which were defined as “owned ‘autos’ subject to a compulsory uninsured motorists law.” *Id.* The court held that because UIM coverage can be rejected in Ohio, “the combined effects of these provisions excludes [sic] appellants from UIM coverage” *Id.* at 576.

Because the terms of the Westfield policy, however inartfully constructed, are not ambiguous, we hold that summary disposition should have been entered in favor of defendant.

¹ The Court seems to have used these acronyms interchangeably. See, e.g., *id.* at 575-576.

The UM Endorsement limits coverage to any *covered auto*. The Garage Declarations Schedule limits UM/UIM coverage to those vehicles defined as “covered autos” under symbol 26 of the Garage Coverage Form. “Covered Auto” under symbol 26 refers only to vehicles that are subject to a compulsory uninsured-motorists’ law. Because Michigan has no such law, the combined effect of the provisions excludes the Subaru from UM/UIM coverage.

Plaintiff contends that “when a conflict arises between the terms of an endorsement and the form provisions of an insurance contract, the terms of an endorsement prevail.” *Hawkeye-Security Ins Co v Vector Const Co*, 185 Mich App 369, 380; 460 NW2d 329 (1990). “[E]ndorsements by their very nature are designed to trump general policy provisions, and where a conflict exists between the provisions of the main policy and the endorsement, the endorsement prevails.” *Besic v Citizens Ins Co of the Midwest*, 290 Mich App 19, 26; 800 NW2d 93 (2010), quoting *Nationwide Mut Ins Co v Schmidt*, 307 F Supp 2d 674, 677 (WD Pa 2004). In *Besic*, *id.* at 21, the owner of a tractor-trailer was injured while operating his tractor-trailer under dispatch to another company (the lessee). His automobile policy applied only if the trailer was not under dispatch. *Id.* at 25. A Michigan Personal Injury and Property Protection [PIP] endorsement stated that it did not apply if the damage resulted from “use of the covered ‘auto’ in the business of anyone to whom it is leased or rented *if the lessee has Michigan Personal Injury and Property Protection coverages on the ‘auto.’*” *Id.* (emphasis in original). The lessee did not have such coverage. *Id.* at 25-26. This Court held that there was a conflict between the form provisions of *Besic*’s policy (not allowing coverage when under dispatch) and the endorsement (extending PIP coverage if the lessee did not have such coverage). *Id.* at 25-27. The conflict was resolved in favor of the endorsement. *Id.* at 26.

The present case differs from *Besic*, because there is no direct conflict between the terms of the endorsement and the other policy provisions; all provisions can be enforced and meaning can be given to all pertinent terms. UIM coverage would apply when an automobile is licensed in Michigan, but principally garaged in a state that has a compulsory uninsured-motorists’ law. It would also apply when an automobile is licensed in a state that has a compulsory uninsured-motorists’ law but is principally garaged in Michigan. Finally, the endorsement also extends coverage to covered autos when “garage operations” are conducted in Michigan, and “garage operations” are defined to “include[] the ownership, maintenance or use of the ‘autos’ indicated in Section I of this Coverage Form as covered ‘autos.’”² The terms of the policy are valuable for a used-car dealer who buys, sells, and transports automobiles across state lines.

We find that the trial court erred in finding UIM coverage for the Subaru.

² “Garage operations” are primarily defined as “the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations.”

Reversed and remanded for entry of summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Pat M. Donofrio